IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

DISTRICT:

FIRST APPEAL NO. 1546 OF 2006

Office Notes,Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Mr.A.B.Borkar for the Appellant.

Mr.S.S.Shah for the Respondent.

CORAM: S.B.DESHMUKH, J.

DATE : 18TH OCTOBER, 2006

P.C.:

Not on Board. Mentioned. Taken on Board.

2. Heard learned Counsel for the parties.

3. On behalf of the respondent, praecipe is filed on 11th October, 2006 seeking speaking to the minutes of the order dated 28th September, 2006, in relation to paragraph 6, and in particular to incorporate the condition, namely, in case of failure on the part of the appellant to

deposit the entire decretal amount within a period of four months from 28th September, 2006, F.A. shall stand dismissed.

4. Learned Counsel for the parties, agree, that the judgment and decree in Special Civil Suit No. 203 of 1997 is passed by the learned IInd Joint Civil Judge, Senior Division, Kolhapur. However, in paragraph 6 of the order dated 28th September, 2006, instead of the word "Kolhapur" it is mentioned as "Solapur".

5. Learned Counsel for the appellant, submits that default clause, may be added. However, in that circumstances, there is no necessity for the filing of undertaking by the appellant on or before 19th October, 2006. In that eventuality, the appellant would be subject to dismissal of appeal as well as breach of the undertaking given to this Court.

6. Learned Counsel for the respondent submits that the appellant had shown readiness and willingness to deposit the entire decretal amount in the trial court, as a condition for passing the order of remand. This readiness and willingness is also recorded in the order passed by this Court on 14th August, 2006.

7. In this view of the matter, by way of speaking to minutes, it needs to be clarified that the appellant shall deposit the entire decretal amount in the trial court, within a period of four months from 28th September, 2006 and in case of failure on the part of the appellant to deposit the entire decretal amount in the trial Court within the stipulated time, the decree passed by the trial court in Special Civil Suit NO. 203 of 1997 shall stand as it is and appeal would fail.

8. In the result, by way of speaking to the minutes, it is clarified that :

(1) In paragraph No.6 of the order dated 28th September, 2006, the word "Solapur" wherever it appears, shall be read as "Kolhapur".

(2) In paragraph No.6, following part of the order shall be treated to be removed :

"The appellant / defendant shall furnish undertaking regarding depositing the entire decretal amount in the trial court within a period of four months from today. Such undertaking to be filed by the appellant / defendant in this court on or before 19.10.2006."

(3) After paragraph no.8, the following be added as paragraph 8-A :

8-A. In case of failure on the part of the applicant to deposit the entire decretal amount in the

trial court within the aforesaid stipulated time, the appellant / original defendant would loose his right to participate in the suit and earlier decree passed in Special Civil Suit No. 203 of 1997 shall stand revived.

9. Parties to appear before the trial Court on 1st February, 2007. The trial court shall commence the hearing of the Special Civil Suit No. 203 of 1997 after ensuring that the decretal amount is deposited as ordered by this Court.

10. In view of the above, the specking to minutes motion is partly allowed and disposed of.

11. All concerned to act on an authenticated copy of this order, which will be provided to the parties as per usual procedure.

Sd/-

(S. B. Deshmukh,J.)